IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Martis et al.
Appl. No.: 09/955,248
Filed: September 17, 2001
Conf. No.: 8992
Title: BIOCHEMICALLY BALANCED PERITONEAL DIALYSIS SOLUTIONS
Art Unit: 1621
Examiner: R. Keys
Docket No.: DI-4641 CONT

#13
3/25/03

Commissioner for Patents
Washington, DC 20231

RESPONSE TO OFFICE ACTION

Sir:

In response to the Office Action dated January 14, 2003, Applicants respectfully submit as follows:

REMARKS

In the Office Action Claims 1-16 are rejected under 35 U.S.C. §§ 102 and/or 103. Applicants respectfully submit that the rejections are improper for the reasons set forth below.

In the Office Action, Claims 1, 2 and 4-8 are rejected under 35 U.S.C. § 102. More specifically, Claims 1, 2 and 4-8 are rejected as allegedly anticipated by *Peritoneal Dialysis International*, Vol. 13, Suppl. 2, October 1992, pp. S116 – S118 ("*Schambye*") in view of U.S. Patent No. 5,296,242 ("*Zander*"); and Claims 1, 2 and 4-8 are rejected as allegedly anticipated by U.S. Patent No. 4,663,166 ("*Veech I*") in view of *Zander*. Applicants respectfully submit that the anticipation rejections are clearly improper.

At the outset, the Patent Office has improperly relied on *Zander* in support of the anticipation rejections. Of course, "[a]nticipation requires the disclosure in a *single* prior art reference of each element of the claim under consideration." *W.L. Gore and Associates v. Garlock Inc.*, 220 USPQ 303, 313 (Fed. Cir. 1983) *emphasis added.* Indeed, the Court of Appeals for the Federal Circuit has held that "[w]hen more than one reference is required to establish unpatentability of the claimed invention, anticipation under § 102 cannot be found, and validity is determined in terms of § 103. *Continental Can Co. U.S.A. v. Monsanto Co.*, 20 USPQ